

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA**

INDECK KEYSTONE ENERGY LLC,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 04-325 Erie
)	
VICTORY ENERGY OPERATIONS)	Judge Sean J. McLaughlin
LLC,)	
)	
Defendant)	
)	
)	JURY TRIAL DEMANDED
)	

**DEFENDANT/COUNTER-PLAINTIFF’S MOTION FOR LEAVE TO FILE SECOND
AMENDED COUNTERCLAIM, *INSTANTER***

Defendant/Counter-Plaintiff, Victory Energy Operations LLC (“VEO”), through its respective undersigned counsel, requests this Court to file the attached Second Amended Counterclaim, *Instanter*, and in support states the following:

1. On March 28, 2005, this Court granted VEO’s Motion for Leave to File Its Amended Counterclaim.
2. The parties have proceeded with discovery, which is now set to close on January 13, 2006.
3. On October 28, 2005, for the first time, Plaintiff/Counter-Defendant Indeck Keystone Energy LLC notified VEO of its intention not to renew the License Agreement that is at the center of this litigation. (A copy of the October 28, 2005 letter is attached hereto as Exhibit A). In that correspondence, IKE’s general manager specifically stated that “Licensee shall no longer have the right to manufacture the Products.” “Products” is defined in the

Agreement as natural circulation, industrial watertube steam generators with a steam capacity rating beginning at 29,000 pph up to and including 150,000 pph.

4. IKE's notice of non-renewal makes clear that IKE believes it can bar VEO from competing fairly and openly in the marketplace after January 8, 2006.

5. Accordingly, VEO seeks to amend its counterclaim to add Count VII, a claim seeking for the court to enter a declaratory judgment that VEO is entitled under the terms of the Agreement to design, manufacture, market and sell natural circulation, industrial watertube steam generators of any size, utilizing information VEO obtains from the public domain, develops on its own, or obtains lawfully from third parties.

6. Plaintiff IKE will not be prejudiced by the granting of this motion, as more than 60 days remain until the close of discovery, and the issues raised in the new Count VII are closely interrelated to the issues already in dispute between the parties.

7. A declaratory judgment is needed to resolve all of the known disputes between the parties, and therefore, VEO seeks leave to file the attached Second Amended Counterclaim, *Instantly*.

WHEREFORE, Defendant/Counterplaintiff requests that this Court grant the motion and enter an order granting VEO leave to file its Second Amended Counterclaim.

Dated: November 4, 2005

Respectfully submitted,

/s/ Christopher T. Sheean
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CERTIFICATE OF SERVICE

Christopher T. Sheean, an attorney, certifies that on the 1st day of September, he caused a copy of the foregoing ***Defendant/Counter-Plaintiff's Motion for Leave to File Second Amended Counterclaim*** to be filed electronically, and that the CM/ECF system for the court will e-mail a copy of the foregoing to the following counsel of record:

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/s/ Christopher T. Sheean
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